

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**926 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO.212 OF
2019**

**OM NAGARI SAHAKARI PATSANSTHA MARYADIT BHINGAR,
AHMEDNAGAR THROUGH BHAUSAHEB KISAN LALGE
VERSUS**

PRASHANT S/O. PANDHARINATH KAMBLE

Mr. Sudheer R. Zambre, Advocate for the appellant

Mr. Andhale S. R., Advocate for respondent

CORAM : KISHORE C. SANT, J.

DATE : 21st DECEMBER, 2022

P. C.

1. This is an application seeking leave to file an appeal challenging the judgment and order dated 14-11-2019 passed by the learned Additional Chief Judicial Magistrate, Ahmednagar thereby the accused is acquitted of the offence punishable under Section 138 of the Negotiable Instrument Act, 1881.

2. The complainant is patsanstha who advanced the loan to one Pallavi Garje. The accused stood as guarantor to her and therefore, the cheque was issued. The learned court below by the impugned order has recorded acquittal on three points. First; the complainant could not prove the locus standi to represent the bank, second is; the patsanstha has not proceeded against main borrower and one other person namely Surekha who is reported to have taken guarantee, and third is; account was closed.

2. This court finds that points needs to be examined about the question of locus standi secondly that the court has committed mistake by saying that it was necessary to proceed against principal borrower and third person namely Surekha when this accused- respondent No.2 responded very much to the guarantee to the loan. Even the third ground that the account was closed also requires to be considered as this defense is not available in the cases under Section 138 of the N. I. Act. This court finds that case is made out to grant leave to file an appeal against acquittal. Hence, following order:-

ORDER

- a] Application is allowed.
- b] Leave is granted to file an appeal against the acquittal.
- c] Office to register this application as appeal.
- d] Criminal Appeal be admitted.
- e] Call R & P

[KISHORE C. SANT, J.]